He was crossing the road at an extremely busy and dangerous junction of 4 cross roads. There was no policeman on point duty, nor traffic lights but he stated that "I considered that as a pedestrian crossing the road and seeing this Jeep coming I had the right to continue crossing the road and that the Jeep should have pulled up." Again he stated "Surely at a junction he has to stop" and again after careful explanation in order that he should appreciate the point that if neither stopped, the accident was bound to happen — he replied, "It was time to cross."

In the absence of other evidence one was driven to the conclusion that there was a complete absence of want of care on the part of the plaintiff in attempting to cross the road as he did. However much one may sympathise with him in whatever injuries he did receive, (and there was no conclusive evidence in this respect that they were as serious as he alleges) it does seem surprising that, if they were as serious as he made out, he should be discharged from the General Hospital the same afternoon, after having one stitch put in a cut above the eyebrows. It is true that he returned the next day and was an inmate for a few days for investigation.

For the reasons given earlier, the plaintiff on the evidence before me was bound to fail in his claim against the defendant and the Suit is dismissed with costs.

Suit dismissed.

HENDRY v. DE CRUZ.

[App. Civil Juris. (Willan, C.J., Russell and Briggs, JJ.)]
December 2, 1948.
[K.L. — Civ. App. No. 44 of 1948]

Courts Enactment, F.M.S., ss. 16(ii) 18, 19, 20 — 1935 Rule No. 1 sub-rule 5 — Failure to deposit security for appeal within the time limited — Whether Court of Appeal is bound by its own decisions. Special leave to extend time in which to appeal.

In this case the appellant sought to appeal against a judgment of the High Court dismissing his claim for possession of certain premises. The judgment was given on the 24th of August 1948. On the 14th September 1948, that is within the period of one month specified in section 18(i) of the Courts Enactment, the notice of appeal was filed in the Supreme Court Registry, but by inadvertence no deposit was made as required by section 20 of the Enactment. It was not till the 11th of October 1948, that is after the said period of one month had expired, that this deposit was tendered to the Registrar. The Registrar refused to accept it, as it was tendered out of time. The applicant thereupon applied for an order that he be given leave to enter the appeal and lodge the security for costs of the appeal despite the fact that the time within which this should have been done had expired. It was argued for the appellant, that the Court should not follow the decision in **Butler-Madden v. Krishnasamy**(1), where it was held that special leave was required to extend the time under section 20 and that the Court in considering whether a ground put forward constituted special leave should follow the definition of "special leave" in the English cases.

Held, that the Court of Appeal was bound by its previous decision in **Butler-Madden v. Krishnasamy**(1) and was therefore bound to hold that the mistake of the clerk of the legal adviser for the appellant did not constitute grounds for granting special leave to extend the time in which to appeal.

Cases referred to :—

(1) *Butler-Madden v. Krishnasamy & others* Malayan Union Civil Appeal No. 15 of 1947 (Unreported).

(2) *Coles v. Ravenshear* (1907) 1 K.B. 1.

(3) *In re Helsby* (1894) 1 Q.B. 742.

(4) *Sockalingam Mudaliar v. Ramasamy Chettiar* (1938) F.M.S.L.R. 77.

(5) *Pillay and another v. The Official Assignee,* Perak Civil Appeal No. 7 of 1947 (Unreported).

(6) *Ng Yew v. Perumal Mudaly* 5 F.M.S.L.R. 21.

(7) *The Official Receiver and Liquidator v. Joseph Grigg and the Chartered Bank of India, Australia and China* 7 F.M.S.L.R. 48.

(8) *Federated Engineering Co. v. Salak South Limited* 2 F.M.S.L.R. 63.

(9) *Velazquez Limited v. Commissioners of Inland Revenue* (1914) 2 K.B. 404.

(10) *Young v. Bristol Aeroplane Company Ltd.* (1944) 1 K.B. 718.

(11) *Young v. Bristol Aeroplane Company Ltd.* (1946) A.C. 163.

(12) *In re Dallremeyer* (1909) 1 K.B. 105.

CIVIL APPLICATION before Court of Appeal for leave to extend time in which to appeal.

R. Ramani (*T. K. Sen* with him) for the applicant.

F. G. Charlesworth for the respondent.

The facts and arguments appear sufficiently from the judgment of Willan, C.J.

Cur. Adv. Vult.

Willan, C.J. : — The applicant seeks to appeal against a judgment of the High Court dismissing his claim for possession of certain premises. That judgment was given on the 24th August, 1948, and on or about the 13th of September, 1948, the applicant instructed his Advocate and Solicitor to lodge an appeal against that judgment.

The provisions governing the time within which appeals to the Court of Appeal may be brought and entered are contained in sections 18, 19 and 20 of the Federated Malay States Courts Enactment (Cap. 2). They are :—

"18. (i) No appeal to the Court shall, except by special leave of the Court or of a Judge sitting as a Judge of such Court, be brought after the expiration of one month.

(ii) The said period shall be calculated in the case of an appeal from an order in Chambers from the time when such order was pronounced or when the appellant first had notice thereof and in all other cases from the time at which the judgment or order was pronounced, or in the case of a refusal of an application from the date of such refusal.

19. (i) All appeals to the Court shall be by way of rehearing and shall be brought by notice of appeal....
.....

20. The appellant shall, within the time limited by section 18 enter the appeal in the list of appeals to be kept in the Court of Appeal and shall, at the same time, lodge with the Registrar of the Court of Appeal the sum of one hundred dollars as security for the Costs of the appeal."

Section 20, as regards entering an appeal in the list of appeals, has been amplified by 1935 Rule No. 1, sub-rule 5, which reads :—

"A list of all civil appeals shall be kept in the Registry in a book to be called "The List of Civil Appeals", and it shall be the duty of the Registrar, on filing of a notice of appeal and on the security required by section 20 of the Enactment being received, to enter in such list the name of the cause, the date of entry and the names of the appellant or appellants and his or their solicitor or solicitors (if any)."

On the 14th of September, 1948, that is within the period of one month specified in sub-section (i) of section 18, the notice of appeal was filed in the Supreme Court Registry, but no deposit of one hundred dollars was made as required by section 20. It was not until the 11th October, 1948, that is after the said period of one month had expired, that this deposit was tendered to the Registrar. He refused to accept it because it was tendered out of time.

The applicant now applies to this Court for an order that he be given leave to enter the appeal and lodge with the Registrar one hundred dollars as security for costs of the appeal despite the fact that the time within which this should have been done has expired, or alternatively for leave to file and serve a further notice of appeal.

This matter is of some importance because it raises the question whether the Court of Appeal is bound by its own previous decisions.

In Malayan Union Civil Appeal No. 15 of 1947, *Butler-Madden v. Krishnasamy & others*[1] an application was made to extend the time in which to bring the appeal on the ground that, owing to inadvertence, the one hundred dollars security for costs had not been deposited within the prescribed time of one month as required by section 20 of the Federated Malay States Courts Enactment (Cap. 2).

I have had the advantage of perusing the Notice of Motion and the supporting affidavit in that application, and there is no doubt that the facts in that application are identical with the facts in the present application i.e. that the notice of appeal was filed in time, but the required deposit of one hundred dollars was not made within the prescribed time.

The application by the Deputy Public Prosecutor on behalf of the appellant to extend the time in that Civil Appeal (No. 15 of 1947) was dismissed by the Court of Appeal, and the learned President of that Court, the Chief Justice of the Colony of Singapore, delivered an oral judgment giving reasons for dismissing the application. A note of that oral judgment was made by one of the other members of that Court of Appeal and is as follows :—

"We consider that in a question of giving indulgence under section 20 we have to consider the terms of section 18 of the Courts Enactment. Any indulgence must be by special leave. The term "special leave" has had judicial interpretation in England. We consider the definition is precluded (sic) by the decision in England.

We consider that the ground put forward by the D.P.P. does not constitute special leave within the meaning of section 20 and the application must be dismissed."

It is quite clear from that note that the Court of Appeal followed decided English cases e.g. *Coles v. Ravenshear*[2] and *In re Helsby*[3] decided under Order 58 Rule 15 prior to its amendment in 1909. Prior to that amendment an extension of time in which to appeal required "special leave" of the Court of Appeal, as it is required here by section 18 of the Courts Enactment (Cap. 2).

Mr. Ramani, for the applicant, submitted that the decision of the previous Court of Appeal in the case of *Butler-Madden v.Krishnasamy & others* (*supra*) is not binding on us because :—

(1) That previous Court of Appeal had given no reasons for their decision.

(2) That decision was given *per incuriam*.

(3) That Federated Malay States Court of Appeal in the past had refused to be bound by its own decisions.

Regarding the first and second submissions, at the hearing of the application for extension of time in this present appeal, it was not known to any member of this Court nor was it known to counsel for either party to the application, that the previous Court of Appeal had given grounds for their decision and that those grounds,

as set out earlier in this judgment, were in existence. That disposes of Mr. Ramani's first and second submissions.

In support of his third submission Mr. Ramani cited the case of *Sockalingam Mudaliar v. Ramasamy Chettiar*[4]. From the report of that case it appears that the Federated Malay States Court of Appeal in the case of *Pillay & another v. The Official Assignee*[5], refused to be bound by a previous decision of the Federated Malay States Court of Appeal in the case of *Ng Yew v. Perumal Mudaly*[6].

There is another local case which Mr. Ramani might have brought to our notice, but failed to mention. That is the decision of the Court of Appeal in *The Official Receiver and Liquidator v. Joseph Grigg and The Chartered Bank of India, Australia & China*[7]. In that case Thorne, J., at pages 53 and 54, said :—

"The very abbreviated report of this case" — that is the case of **Federated Engineering Company v. Salak South Limited**[8] "appears at first sight to be an authority directly in point, and it was pressed upon us by Mr. Briggs for the respondent on the authority of the case of **Velazquez Limited v. Commissioners of Inland Revenue**[9] that this Court was bound by this ruling of the Court of Appeal. I accept the principle for which he contends, and I agree that where a question of law is raised in debate in the Court of Appeal, and the Judges after hearing the question fully argued rule upon the question thus raised, and decide the matter, the Court of Appeal should regard itself bound by that decision even though the members of the Court feel that, but for the prior decision they would have decided otherwise, unless it can be shown that for some good reason the decision was manifestly wrong.

It is the application of that principle to the present case in which I do not concur with the learned counsel.

The report of this case is very short — the facts are not stated sufficiently fully to be able to form an accurate opinion — the arguments of counsel do not appear, nor do the reasons for the judgment.

We were told from the Bar that no written reasons are extant.

It is a truism to say that a reported case is an authority only upon the point of law which was determined by the judgment upon the facts of the particular case.

For all one knows to the contrary there may have been facts in this case which influenced the Court to hold that the Federated Engineering Company ought to be treated as secured creditors (such for example that the officers of the Company had improperly induced them to delay execution) while in the other case dealt with by this report the Court refused to allow the attaching creditor to be treated as a secured creditor.

I mention this as showing the danger of too ready acceptance of such a report and I am not prepared to express any opinion as to whether or not that case was rightly decided.

I content myself by saying that if that case is relied upon as authority for the general proposition that in the winding-up of a company persons circumstanced as are the respondents to this appeal are secured creditors in the winding up, this case does not appear to me to be an authority for that proposition and if it purports so to be it is not good law and should no longer be followed by the Courts of the Federated Malay States."

When one reads the very abbreviated report of *Federated Engineering Company v. Salak South Limited* (*supra*), one realises the difficulties in which Thorne, J. and the other members of that Court of Appeal found themselves.

In the case before us those difficulties do not exist. The facts and the reasons for the decision of the Court of Appeal in *Butler-Madden v. Krishnasamy & others* (*supra*) are clear.

The answer to the question whether we are bound by the previous decision of the Court of Appeal in the *Butler-Madden* case depends on whether the Court of Appeal in England is bound by its own decisions. This is evident from sub-section (ii) of section 16 of the Federated Malay States Courts Enactment, which reads :—

"In any case not provided for by this Enactment or by rules in force thereunder the practice and procedure for the time being of the Court of Appeal in England shall be followed as nearly as may be."

The question whether the Court of Appeal in England should be bound to follow its own decisions remained in doubt until 1944 and was then settled by the case of *Young v. Bristol Aeroplane Company Limited*[10]. The appeal in that case first came on for hearing before Lord Greene, Master of the Rolls, and Lords Justices MacKinnon and Goddard. In view of its importance, the appeal was eventually argued before a full Court consisting of Lord Greene, Master of the Rolls, and Lords Justices Scott, MacKinnon, Luxmoore, Goddard and du Parcq. The judgment of the Court was delivered by Lord Greene, who, after stating at page 723 :—

"The question thus raised as to the jurisdiction of this Court to refuse to follow decisions of its own was obviously one of great general importance and directions were given for the appeal to be argued before the full Court. It is surprising that so fundamental a matter should at this date still remain in doubt."

said, at page 729 :—

"On a careful examination of the whole matter we have come to the clear conclusion that this Court is bound to follow previous decisions of its own as well as those of Courts of co-ordinate jurisdiction. The only exceptions to this rule (two of them apparent only) are those already mentioned which for convenience we here summarise: (1) The Court is entitled and bound to decide which of two conflicting decisions of its own it will follow. (2) The Court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot, in its opinion, stand with a decision of the House of Lords. (3) The Court is not bound to follow a decision of its own if it is satisfied that the decision was given **per incuriam**."

An appeal was preferred to the House of Lords against the decision of the Court of Appeal on other points, but it is interesting to note that Lord Simon agreed with the judgment of the Court of Appeal that

that Court is bound by its own decisions — see *Young v. Bristol Aeroplane Company Limited*[11] at page 169 :—

"One of the conclusions reached in the judgment of the Master of the Rolls, with which I agree, is that if the Court of Appeal, when sitting in one of its divisions, has in a previous case pronounced on a point of law which necessarily covers a later case coming before the Court, the previous decision must be followed (unless, of course, it was given per incuriam, or unless the House of Lords has in the meantime decided that the law is otherwise), and that this application of the rules governing the use of precedents binds the full Court of Appeal no less than a division of the Court as usually constituted."

In the face of that clear decision, which has set a matter at rest on which there had been doubts for a long period of time, there is no doubt that this Court, in view of section 16(ii) of the Federated Malay States Courts Enactment, is bound by its own decisions, and therefore we are bound by the previous decision of this Court in the case of *Butler-Madden v. Krishnasamy & others* (*supra*).

Even if this Court was at liberty to refuse to follow its own decision, I should still follow the decision in the case of *Butler-Madden v. Krishnasamy & others* (*supra*) because I agree with it. It is clear from sections 18 and 20 of the Federated Malay States Courts Enactment that the notice of appeal must be filed, and the required deposit made, within the statutory period prescribed by section 18. Both these acts must be done within the prescribed time; the filing of the notice of appeal alone in time is not sufficient. As to that, the case of *In re Dallemeyer*[12] is in point. That was a decision on Bankruptcy Rules 130 and 131 — see *Williams* on Bankruptcy, 15th edition, pages 576 and 577. That case decided that the serving of a notice of appeal within the time prescribed by the Rules, without making the required deposit of security for costs within the same prescribed time, is not sufficient — both acts must be done. It is true that the Court of Appeal in hat case granted an extension of time in which to make the deposit, but that was mainly on the ground that the bankrupt had not been able to find the money to put up the required deposit within the time prescribed.

In the case before us the applicant relies on the affidavit filed by his Advocate and Solicitor; paragaphs 5, 6 and 7 of that affidavit read :—

"5. The said Notice of Appeal was served on the Defendant-Respondent on the 17th day of September, 1948.

6. In getting the Notice of Appeal filed and served I had instructed my clerk, Yap Phooi Fong, to obtain from the client a cheque for the deposit and attend to all other formalities in filing and serving the same.

7. On or about the 9th day of October, 1948, I was preparing to argue the application for stay of execution, and on looking through my papers discovered that there was no receipt for the deposit of $100 in Court that should have been made. I thereupon made enquiries of my clerk at his house, as he had been ill for some time and not attending office, and I found for the first time on Sunday the 10th October, 1948, that the deposit had been omitted to be made."

If those facts are viewed in the light most favourable to the appellant, they indicate a mistake on the part of the clerk of the legal adviser for the appellant, and on the authority of *In re Helsby* (*supra*) such a mistake does not constitute grounds for granting special leave to extend the time in which to appeal.

In my view, however, the facts disclosed in those paragraphs of the affidavit indicate that neither the clerk nor the applicant used sufficient diligence to ensure the appeal being brought in time.

Therefore, even if I did not consider this Court bound by the decision in the case of *Butler-Madden v. Krishnasamy and others* (*supra*), I would not have granted the application to extend the time. Accordingly this application must be dismissed with costs.

Russell, J. : — I have had the advantage of reading the judgment of the learned President. I agree with it and do not wish to add anything.

Briggs, J. : — I have had the advantage of reading the judgment of the learned Chief Justice. I agree with it and have nothing to add.

Application dismissed.

AWANG BIN OMAR v. HAJI OMAR BIN ISMAIL & ANOTHER.

[Orig. Civil Juris. (Laville, J.) January 13, 1949]
[Johore — Civil Suit No. 5 of 1947]

Contract — Defence of non est factum — False representation.

In this case the plaintiff sued the defendants for damages for breach of contract. It appeared that the first defendant, who did not know English, was induced by the second defendant, his brother, to sign the document containing the contract, on the understanding that it was a matter of witnessing his brother's signature.

Held, that on the facts the defence of non est factum was open to the first defendant and the first defendant could not be held liable on the Contract.

Cases referred to :—

(1) *Foster v. Mackinnon* (1869) L.R. 4 C.P. 704.
(2) *Thoroughgood's Case* (1582), 2 Co. Rep. 9a.
(3) *Lewis v. Clay* (1898) 67 L.J.Q.B. 224.

CIVIL SUIT.

M. B. Brash for the plaintiff.

Defendants in person.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.